IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 14533 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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SHANTILAL P THAKKAR

Versus

DIRECDTOR HIGHER EDUCATION GUJARAT STATE & ORS

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Appearance:

1. Special Civil Application No. 14533 of 1993

MR Deepak C. Rawal for Mr. MR ANAND for the petitioner.

Mr. Ketan M Parikh, Assistant GOVERNMENT PLEADER for Respondent No. 1-3

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CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 28/06/2001

ORAL JUDGEMENT

This petition was pending and on an

earlier occasion, the learned Assistant Government Pleader pointed out that the petitioner's appeal pending before the appellate authority was not decided till the date of arguments on 31st July, 1998. Hence, this court did not think it proper to exercise its extraordinary jurisdiction at the premature stage when the appeal of the petitioner was pending before the appellate authority for the conditions for being exempted from B.Ed. but did not get B.Ed. training. The petitioner was only a graduate and so the benefit of minimum qualification cannot be awarded in higher secondary section. The demand of the petitioner for getting the pay scale of higher secondary section considering his minimum qualification was rejected by the appellate authority i.e. Additional Chief Secretary, Education Department vide order dated 5th April, 1999. As adverse order was passed against the petitioner, at the instance of the petitioner, this petition has been revived and certain amendments have been permitted to be made in the petition with an additional prayer for quashing and setting aside the order dated 5.4.1999 at Annexure "R" passed by the respondent authorities.

2. The petition was filed for quashing and setting aside the order dated 1`4.5.1991 at Annexure "F" and for a direction to the respondents to give the benefits of higher pay scale as stated in the GR dated 8.12.1989 and for the payment of benefits of pay scale of Rs.550-900 from 1.7.79 and Rs.1640-2900 from 1.1.86 and for payment of interest on the amount of higher pay scale for which the petitioner was entitled from the date when his juniors were paid the benefit of higher pay scale and for treating the petitioner as a deemed trained teacher.

3. Brief facts of this petition are that the petitioner was qualified as B.Com. and he joined Alfred Secondary school as an Assistant Teacher on 7.2.63. The Government had introduced the higher secondary scheme in 1976. Hence, the petitioner was permitted to attend the Government higher secondary school in the year 1976 and he continued till his retirement on 31st May 1998. The petitioner is a commerce graduate having the qualification prescribed in the GR dated 8.12.89 and was entitled to the benefit of deemed trained teacher. The petitioner is having minimum qualification as prescribed in the GR dated 8.12.89. Hence, he was entitled to the pay scale of Rs.1640-2900 from 1.8.86. The petitioner was appointed as a commerce teacher and was taking subject of commerce. The Joint Director of Education explained in the circular dated 8.12.89 on 24th April, 1990 that the teachers who are having minimum

qualifications are entitled to the benefits of the GR dated 8.12.89. The Deputy Director of Education by his letter dated 4.4.1991 suggested that the petitioner was entitled to the benefit of GR dated 8.12.90. The petitioner was working as a higher secondary teacher since June, 1976 and he was sent for training. Since, the petitioner was discharging his duties for higher secondary class. Hence, he was entitled for the benefit of GR dated 8.12.89 whereby the payscale of Rs.550-900 from 1.7.79 and the pay scale of Rs.1640-2900 from 1.1.87 has to be fixed. It is also stated that the petitioner was at serial no. 2011 in the seniority list, while other two teachers, namely Kum. H.R.Mehta and C.M.Purohit were at serial nos. 2023 and 2024 in the seniority list stated above. On the direction of the Deputy Director of Education, Kum. H.R.Mehta and C.M.Purohit were appointed before 31st March, 1981. Hence, they were entitled to get the benefit of the GR dated 8.12.89. It is also mentioned that the benefit as stated in the GR dated 8.12.79 be given in the similar manner. The Deputy Director of Education passed the order dated 1.7.90 in that respect. Kum. H.R.Mehta and C.M.Purobhit who were junior to the petitioner have been given the benefit of the pay scale of Rs. 1640-2900 as per the GR dated 8.12.89, while the petitioner's claim was rejected by the Deputy Director of Education vide order dated 13th May, 1991 on the ground that he was not possessing a degree of B.Ed. By the GR dated 20th December, 1976, a policy decision was taken in which it is stated that in case a commerce teacher is not available having a degree of B.Com. B.Ed., commerce teacher, having a B.Com. degree can be appointed as a Commerce teacher as a special case. It is also stated that without commerce teacher, subject of commerce cannot be continued in the school. Hence, the petitioner was given the subject of commerce for the purpose of teaching and his case was considered as a special case. The Joint Director of Higher Education knowing the contents of the GR dated 20th December, 1976 passed the order dated 13th May, 1991 rejecting the grievance of the petitioner regarding higher pay scale is in violation of its own policy decision, discriminatory and violative of Articles 14 and 16 of the Constitution of India. The petitioner therefore, preferred an appeal before the Tribunal. The Tribunal passed the order that the Tribunal has no jurisdiction in the matter regarding the pay scale. Hence, the appeal of the petitioner was dismissed by the Tribunal. Thereafter, the petitioner preferred an appeal before Superintendent of Education Department, Gandhinagar on 5.2.1992 and that appeal has been dismissed by an order dated 5th April, 1999.

4. The petitioner also gave a notice dated 8.7.1993 to the respondents, but no response has been given. It is also stated that the claim of the petitioner with regard to the higher pay scale by the Deputy Director of Education rejecting the claim of the petitioner vide order dated 13.5.91 ignoring the GR dated 24th April, 1990 and that order is in violation of GR dated 24.4.1990 and GR dated 8.12.89.

By an amendment the petitioner stated that at the time when the appeal was preferred by the petitioner before Superintendent of Education Department, the petitioner submitted various documents including the certificate issued by the Principal, Government Higher secondary school, Gandhinagar wherein it is stated that the petitioner has worked in the higher secondary school since 1976. A certificate issued by the Government higher secondary school, Rapar, Dist: Kutch was also produced in which it is also stated that the salary and other allowances were given to the petitioner under the head of "higher secondary" department. It is also stated that in the seniority list, the petitioner was at serial no. 2011 in the seniority list published in the year 1984, while C.M.Purohit was at serial no. 2024 and he has been given the benefit of Government resolution dated 8.12.89. In the Government resolution dated 7.7.90, the Principals of higher secondary schools were directed to make proposals for the approval in respect of the teachers who have minimum qualifications and are entitled to the benefit of Government resolution dated 8.12.89. The petitioner has raised these questions before the appellate authority, but the appellate authority has not considered the relevant material submitted by the petitioner and the order dated 5.4.99 has been passed by the appellate authority rejecting the appeal which is absolutely illegal, unconstitutional and suffers from non-application of mind.

5. The respondents have filed affidavit-in-reply stating therein that the petitioner was appointed prior to the pattern of higher secondary stream came into force. The educational qualifications for the higher secondary school teacher have been prescribed in the Government resolution dated 28th October, 1975 and the guidelines have been issued by the circular dated 24th April, 1990 to the effect that the teachers who possess the minimum qualifications like trained post graduate class-III or trained graduate teacher having not less than seven years' experience or post graduate and graduate teachers and have been

recognised by the competent authority would be entitled for the benefits. For the higher secondary general stream, teacher were not available and hence it was decided that if the teachers for teaching subject are not available with requisite qualifications, suitable candidates having degree of M.Com., second class or B.Com. with 55% marks are to be appointed till the suitable candidates for the subject are not available. On that condition, the Government has granted permission to the schools for teaching such subjects. The petitioner is not holding any requisite qualification nor has undergone any prescribed training for becoming eligible to teach such subjects and therefore, he is not entitled to the grade of pay scales, seniority or any such ancillary benefits. The petitioner is possessing only a degree of B.Com. and has not undergone any training equivalent to B.Ed. Hence, he is not entitled to any relief prayed for in the petition.

This affidavit-in-reply appears to have been misplaced and is not available on record, but a photostat copy of that affidavit has been placed on record.

6. Affidavit-in-rejoinder has also been filed by the petitioner. Further affidavit on behalf of the respondents has also been filed in which it is stated that Kum. H.R.Mehta and C.M.Purohit who were junior to the petitioner had undergone required training at the relevant time and the training which they had undergone was as prescribed by the norms of the authority. As the petitioner has not undergone any prescribed training and complied with the instructions or directions under the Government resolution. Hence, he is not entitled to any benefit arising out of the same.

7. Heard the learned counsel for the parties and perused the relevant papers on record. The contention of the learned advocate for the petitioner is that on introduction of the higher secondary stream, the petitioner was directed to teach the classes of higher secondary section and he continued to teach the classes of higher secondary from 1976 till his retirement. In that respect, a certificate has been issued by the Principal, Government Higher secondary school, Gandhinagar to show that the petitioner had taught classes of 11th and 12th standards in different schools from 12.8.76 to 28.6.1984 and continued thereafter. He also submitted that he is possessing minimum qualification required by the Government Resolution and under those minimum qualifications, the petitioner was

directed to teach the classes of higher secondary section. The Deputy Director of Education directed the institutions to make the proposal for teachers who have been appointed before 31st March, 1981 as they come within the purview of the minimum qualification even if they do not possess the qualifications as per the resolution dated 28th October, 1975 and they were entitled for the notional pay scale of Rs.550-900 from 1.7.79 and Rs.1640-2900 from 1.8.86. The Deputy Director of Education by the letter dated 4.4.91 directed to decide the case of the petitioner who possessed the minimum qualification of B.Com. and for fixation of the pay scale of Rs.550-900 with effect from 1.7.79 and pay scale of Rs.1640-2900 with effect from 1.1.86. The petitioner was also sent for requisite training. The District Education Officer by his letter dated 8.4.76 directed the petitioner to go for the training course. After completing the course, a certificate was issued to the petitioner by the Central Director in respect of the training. Thus, the petitioner has minimum qualification and he was directed to be given the pay scale of higher secondary stream. The petitioner has also undergne the training as per the direction of the department concerned. As such, he will be deemed to be a trained teacher and is entitled for the benefits of the trained teacher under higher secondary stream.

7. On the other hand, the learned AGP contended that the petitioner was not having the minimum qualification and the resolution dated 20.12.1991 prescribed the applicability of the higher secondary grade to the teachers who are trained post graduates and trained graduates. I have seen the resolution dated 20.12.91 but this resolution does not throw light on the deemed trained teacher nor any definition of a trained graduate has been prescribed. He also submitted that the petitioner has not undergone the training equivalent to B.Ed. Hence, he is not entitled for any benefit of higher secondary scale. The petitioner was sent for a week's training in a particular subject, but not the training equivalent to B.Ed. Therefore, the petitioner will not be treated as a trained teacher and he is not entitled for any benefit.

8. I have carefully considered the contentions of the learned counsel for the parties and gone through the papers on record. In this respect, the learned counsel for the respondents could not point out as to why the petitioner was sent for a week's training by the department and why not for training equivalent to B.Ed. There was no bar or bar prescribed by the

department that the petitioner could not have been sent for the training equivalent to B.Ed. Admittedly, the petitioner was sent for the training by the department itself and he completed that training. A certificate was also issued in that respect. Hence, I do not find any substance in the contention of the learned counsel for the respondents in this respect. In the higher secondary stream, commerce subject was introduced as one of the subjects and at least one commerce teacher should have be appointed therefor. For that purpose, directions were given to the institutions and it is mentioned in the guidelines dated 20th December, 1976 that the minimum qualifications for the appointment of said teacher was that the teacher was required to have passed M.Com. with second class or B.Com. with minimum 55% marks. It is also mentioned therein that some institutions who have not followed the guidelines strictly in appointing teachers, but they were required to appoint such teachers with requisite qualifications if not available, they were at liebrty to appoint teachers with less percentage, qualifications and only in those cases where such qualified persons are not available, then they can appoint such persons with less qualifications till the persons with required qualifications are not available. It is also made clear that for the commerce stream, there must be comemrce graduate teacher and without commerce teacher, no permission can be granted for commerce stream. The minimum qualification has been prescribed by the circular dated 14.4.1990 (dated 24.4.1990 Annexure "B"). "Minimum qualification" has been defined in this circular. (1) trained post graduate with 3rd class (2) trained graduates with experience of seven years (3) only post graduates and graduates recognised by the competent authority and the competent authority is the Director of Education-District Education Officer. It is made clear that all the recognised higher secondary school teachers with minimum qualifications are entitled for getting the benefit of the resolution from the date as mentioned in this resolution. The meaning of word "recognised teacher" is also made clear and all the higher school teachers like trained post graduate, 3rd class, trained graduates, possessing experience not less than seven years. Only post graduates and graduates who are recognised by the competent authority come within the purview of the word "minimum qualifications" or "recognised teachers". Instructions were also issued by a letter dated 1.7.90. Considering various letters, the pay scale of higher secondary school teachers at Rs.550-900 from 1.7.79 and Rs.1640-2900 from 1.1.86 has been sanctioned for the persons possessing requisite qualifications. As per the provisions of the Education

Department dated 8.12.89, Mrs. Banjara, R.B.Pandya, C.M.Purohit, Kum. H.R.Mehta have already been appointed before 31st March, 1981. Hence, the teachers who were appointed prior to 31st March, 1981 come within the purview of minimum qualifications. Even if they do not possess qualifications as per the resolution dated 28th October, 1975, they are entitled for the pay scale of Rs.550-900 from 1.7.79 and Rs.1640-2900 from 1.1.86 as per the resolution dated 8.12.1989 of the Education Department and all the institutions were required to pass necessary orders as having fixed the monetary benefits as stated above. In the letter dated 4.4.91 of the Deputy Director, it is stated that in June, 1976 when 10 + 2 scheme was introduced, the petitioner was sent for the training for higher secondary education by the District Education Officer, Bhuj and the petitioner was directed by the District Education Officer to look after the higher secondary education department and it was resolved that those who were possessing minimum qualifications, their pay scales should be fixed in the pay scale of Rs.550-900 with effect from 1.7.79 and from January, 1986 the pay scale should be fixed in the pay scale of Rs.1640-2900 and a direction was given that the case of the petitioner who possessed the minimum qualification of B.Com. and hence his pay scale should be fixed as stated above. In the seniority list, the petitioner was shown at serial no. 2011 having the qualification of B.Com. passed in the year 1962. Other juniors, namely Kum. H.R.Mehta and C.M.Purohit were shown at serial nos. 2023 and 2024 respectively. Kum. Mehta was only B.Com., while Mr. Purohit had passed B.Com. in the year 1975 and M.Com. in the year 1980, but the juniors Kum. H.R.Mehta and C.M.Purohit have been given the benefit of the pay scale of higher secondary scale. By the guidelines dated 20th December, 1976 it was directed that if the qualified persons are not available, the persons having less qualifications should be appointed till the availibility of required qualified persons and it is made clear that for the commerce, there must be a commerce/graduate teacher and without commerce teacher such permission cannot be given for commerce stream. The Deputy Director of Education, by his letter dated 4.4.91 directed the Joint Director of Education to decide the case of the petitioner who possessed minimum qualification of B.Com. Hence, his pay should be fixed as per the pay scale provided for the teacher of higher secondary stream. The petitioner has served in several Government higher secondary schools and had the experience of 11th and 12th standards to the effect that the Principal of Government Higher secondary school issued a certificate dated 9th January, 1997. It is also

stated in that certificate that the petitioner continued to work as assigned for teaching of 11th and 12th standards after 28th June, 1984. The petitioner also produced a certificate dated 29th September, 1997 issued by Shri Government Higher secondary school, Rapar wherein it is stated that the petitioner was given salary and other allowances, expenses which is recorded under the head of "Higher Secondary" section. By a circular dated 7.7.90, it was made clear that the office of 10+2 cell was sanctioning to the teachers with such minimum qualification even before the academic year 1981-82. Hence, it was necessary to get the sanction from the office of 10+2 cell for the minimum qualification of teacher appointed in the higher secondary section and all District Education Officers were informed to send the proposal of the cases of approval of such appointment with minimum qualifications prior to the academic year 1981-82 in the attached statement. In the statement, it shows the endorsement "the office of D.E.O. sent the proposal to Government on 14.8.89 to give the pay scale of trained graduate considering deemed training and that proposal was sent for approval of the minimum qualification of the teacher having minimum qualification prior to the year 1981-82 in the higher secondary section. The Government resolution dated 2rd December, 1976 was passed after considering other Government resolutions dated 28th October, 1975, 2nd June, 1976, 1.1.76, 28th May, 1976 and the letter dated 31st May, 1976 from the Joint Director of Education, 10+2 special cell, Gujarat State, wherein it is stated that the revised pay scale for the post of untrained graduate secondary school teacher was Rs.330-420 and for the trained graduate teacher it was Rs.440-750. On account of introduction of higher secondary stage of education, higher secondary schools conducting 10+2 commerce stream course had to recruit trained commerce graduate/post graduate teachers as required under the Government resolution dated 28th October, 1975. Since there was a dirth of trained commerce graduate/post graduate teachers, the schools have recruited untrained commerce graduates/post graduates subject to their undergoing training programme approved by the Government and those teachers were directed to be given advance increments to untrained commerce graduate recruited as teachers in higher secondary schools with commerce stream. It was also directed that three advance increments in the pay scale of Rs.330-8-370-EB-10-420 should be granted to untrained commerce graduates/post graduates at the time of their initial recruitments as higher secondary teachers in higher secondary schools in commerce stream. The petitioner was sent for the required training and a

certificate has also been issued by the Central Director to the effect of his having completed the training.

10. On going through the material on record, I hold that the respondents have committed an error on the face of the record in not giving the pay scale of higher secondary school teacher to the petitioner and the appellate authority has also committed an error in rejecting the appeal of the petitioner as untrained teachers who were appointed prior to 1.7.79 have been treated as deemed "Trained teachers". The petitioner was already appointed for teaching students of 11th and 12th standards and he continued to do his job since 1976 till the date of his retirement. The petitioner also falls within the definition of "minimum qualification". The petitioner has also undergone training. As such, the petitioner will be deemed to be a "trained teacher" for higher secondary stream.

11. In the facts and circumstances, the impugned orders are liable to be quashed and set aside and the petition deserves to be allowed. Accordingly, the petition is allowed. The impugned orders dated 13.5.1991 and 5.4.1999 are hereby quashed and set aside. The respondents are directed to give the pay scale of higher secondary teacher to the petitioner according to rules with effect from 1.1.1986. The department is further directed to calculate the actual amount to be paid to the petitioner within three months and pay the arrears of pay within one month thereafter. It is pointed out that the petitioner has already retired on 31.5.1998. The respondents are therefore, directed to accordingly re-fix and pay retiral benefits to the petitioner. Rule is made abslute accordingly with no order as to costs.

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